

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAJOSEPH P. CUVIELLO, *et al.*,

No. C-06-5517 EMC

Plaintiffs,

v.

**ORDER RE PLAINTIFFS' "JOINT  
LETTER" RE NORTHEAST STAIRS**CITY OF OAKLAND, *et al.*,**(Docket No. 440)**Defendants.  

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At a hearing on December 23, 2011, the Court ordered the parties to meet and confer regarding the northeast stairs issue and to submit a joint letter by January 20, 2012. *See* Docket No. 439 (civil minutes). On January 23, 2012, Plaintiffs submitted a filing on their own, indicating that, immediately after the hearing, the parties discussed the issue briefly in the hallway, that Defendant stated they would follow up, but that Defendant never did. *See* Docket No. 440 (Plaintiffs' "joint letter").

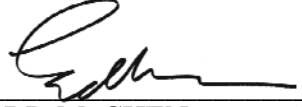
Accepting Plaintiffs' representations as true, the Court finds that **both parties** have failed to comply with its order. First, a brief discussion in the courtroom hallway does not constitute a good faith meet and confer. Second, it is not acceptable for either party to "wait" for the other to initiate or follow-up on a discussion. This failure of the parties to communicate with one another has been symptomatic of this litigation and has led to needless and unjustified motion practice (including the multiple motions for sanctions filed by Plaintiffs), and the Court shall not tolerate it any further. In the future, the Court expects that the parties shall communicate and/or meet and confer in good faith.

1 A failure to do so will result in sanctions, potentially on **both parties**, depending on the circumstances.

2 As for the issue regarding the northeast stairs, the Court hereby orders that lead trial counsel  
3 for each side appear (or the party if not represented) for an in-person meet and confer, to be held at  
4 the federal courthouse on February 2, 2012. The parties shall make an appearance in Courtroom 5  
5 before the Courtroom Deputy Clerk at 9:30 a.m.. The parties are expected to resolve the dispute  
6 without the need for judicial intervention and should be prepared to meet and confer all day, if  
7 necessary, to resolve the dispute. If, at the end of the day, the parties are not able to resolve the  
8 dispute, then they shall submit by February 9, 2012, a **joint letter**, stating what remains unresolved  
9 and what each side's last offer of compromise is. A party that takes a position that is not  
10 substantially justified may be sanctioned.

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12 IT IS SO ORDERED.

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14 Dated: January 24, 2012

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17 EDWARD M. CHEN  
18 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

CUVIELLO ET AL et al,

Case Number: CV06-05517 EMC

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

CITY OF OAKLAND ET AL et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 24, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Joseph Patrick CuvIELlo  
Box 2834  
Redwood City, CA 94064

Dated: January 24, 2012



Richard W. Wieking, Clerk  
By: Betty Lee, Deputy Clerk